

ADMINISTRATIVE PANEL DECISION

TPS Parking Management, LLC v. Carolina Rodrigues, Fundacion Comercio Electronico

Case No. D2023-4491

1. The Parties

The Complainant is TPS Parking Management, LLC, United States of America (“United States”), represented by Neal, Gerber & Eisenberg LLP, United States.

The Respondent is Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

2. The Domain Name and Registrar

The disputed domain name <theparkingspot.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 27, 2023. On November 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 1, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 23, 2023.

The Center appointed Adam Taylor as the sole panelist in this matter on November 27, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

For around 25 years, the Complainant has provided airport parking services under the mark THEPARKINGSPOT at many airports in the United States. The Complainant has promoted its services in various ways including on billboards, at professional and collegiate sporting events, through social media and via customer coupons.

The Complainant owns a number of registered trade marks for THEPARKINGSPOT including United States trade mark No. 2,963,762, registered on June 28, 2005, in class 39.

The Complainant operates a website at “www.theparkingspot.com”.

The disputed domain name was registered on June 6, 2023.

In October 2023, the disputed domain name was used at various times to redirect: (a) to a captcha notice on an Indian website, (b) to a website at “ww1.onlinescustomersurvey.com” with pay-per-click (“PPC”) links to “Customer Research”, “Employee Feedback Survey” and “Crm Marketing”; and (c) to the Complainant’s own website (although the Complainant’s site could not be reached when using a secure browser indicating that the redirection may involve malware or the like).

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for transfer of the disputed domain name.

B. Respondent

The Respondent did not reply to the Complainant’s contentions.

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trade mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognisable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. A domain name which, as here, consists of a common, obvious, or intentional misspelling of a trade mark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. [WIPO Overview 3.0](#), section 1.9.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognised that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Paragraph 4(c) of the Policy gives examples of circumstances which, if proved, suffice to demonstrate that a respondent possesses rights or legitimate interests.

As to paragraph 4(c)(i) of the Policy, in the Panel’s view, none of the various uses of the disputed domain name outlined in section 4 above, including redirection of the disputed domain name to the Complainant’s own website, most likely in connection with malware or the like, constitute a *bona fide* offering of goods or services by the Respondent.

Nor is there any evidence that paragraphs 4(c)(ii) or (iii) of the Policy are relevant in the circumstances of this case.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and is being used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that, not only does the disputed domain name comprise an intentional misspelling of the Complainant’s trade mark (i.e., by inversion of the letters “g” and “s”), the Respondent has used the disputed domain name, amongst other things, to redirect to the Complainant’s own site. Plainly, the Respondent registered and used the disputed domain name with the Complainant’s mark in mind.

While the exact nature of the Respondent's scheme is not clear, as discussed above, it seems likely that the disputed domain name has been used for malware or some other fraudulent purpose. Certainly, the Respondent has not appeared in this proceeding to contest otherwise. Panels have held that the use of a domain name for illegal activity constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, the Panel finds that the Complainant has established the third element of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <theparkingspot.com> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: December 11, 2023